IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 410 of 1993
With
SPECIAL CIVIL APPLICATION No. 835 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? No

2 To be referred to the Reporter or not ? No

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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PRAKASHBHAI M.MARVADI & 1 - Petitioner(s)
Versus
MUNI. CORPORATION OF BARODA & 1 - Respondent(s)

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Appearance :
MR RD RAVAL for Petitioner(s) : 1 - 2.
MR PRANAV G DESAI for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

Date : 26/06/2006

ORAL JUDGMENT

Prakashbhai Muljibhai Marwadi (petitioner No. 1 in S.C.A. No. 410/93) joined service of the

Baroda Municipal Corporation as Safai Sevak on 13.12.1984 and Kishor Manubhai Solanki (petitioner No. 2 in the same petition) joined service of the Baroda Municipal Corporation as Safai Sevak on 1.7.1983 and Varia Chinubhai (petitioner in S.C.A. No. 835/93) joined service of the Baroda Municipal Corporation as Clerk on 1.1.1985. It is the case of all these three petitioners that after their appointment, they were entrusted the duties of Supervisors under the Baroda Municipal Corporation (hereinafter referred to as “the respondent Corporation or Corporation”) and that identity cards were also issued to each of them indicating that they were serving as Supervisors. Such identity cards were issued as far back as in 1991 and 1993 and identity cards also indicated that the petitioners were recruited in the Corporation's service at the relevant time 1983/1985 as the case may be. In both these petitions, a number of documents are produced to substantiate the petitioners' case that they were required to perform the duties of Supervisors. The grievance in these two petitions is that although the petitioners are required to render the service as Supervisors since 1983/1985 as the case may be, they are not being paid salaries in the pay scale for Supervisors but they are being paid salaries and allowances in the lower pay scale of Safai Kamdars/Clerk where the petitioners were initially appointed.

2. These petitions are resisted by affidavits-

in-reply filed by the Deputy Municipal Commissioner for and on behalf of the respondent Corporation contending that the petitioners in Spl.C.A. No. 410 of 1993 were appointed as Sweepers and petitioner in Spl. C.A. No. 835 of 1993 was appointed as a Clerk. The competent appointing authority is Deputy Municipal Commissioner and that in the absence of any appointment order issued by the Deputy Municipal Commissioner appointing the petitioners as Supervisors, the petitioners have no legal right to claim salary in the pay scale for Supervisors. It is also submitted that issuance of identity cards by any subordinate officer cannot confer any legal rights upon the petitioners to claim salary for the post of Supervisors.

3. At the hearing of these petitions Mr. R.D. Raval, learned advocate for the petitioners has submitted that for whatever reasons the respondent Corporation may not have issued any formal order appointing the petitioners as Supervisors but the fact remains that the petitioners have been required to perform the duties of the Supervisors for the last more than 20 years and in any case the petitioners have been actually working as Supervisors prior to the date of filing of the petitions in January/February, 1993. It is also submitted that the identity cards were issued by higher officers like Assistant Municipal Commissioner and not by any Class III employee and therefore the Corporation cannot be permitted to disown such strong evidence in favour of

the petitioners. Mr. Raval has also strongly relied on the judgement dated 16.2.2006 of another learned Single Judge of this Court in Special Civil Application No. 8698 of 1990 wherein a similar grievance was made by Corporation employees in the matter of pay sale for the post of Complaint Receiver. The Court accepted the grievance of those petitioners and held that the petitioners there were required to be treated as Complaint Receivers and they were required to be paid salary and allowances for the post of Complaint Receivers. However, looking to the financial position of the Corporation, the Court did not cast any financial burden on the Corporation with regard to payment of arrears but at the same time the Court directed the Corporation to make notional pay fixation with effect from the date of filing of the petition.

4. On the other hand Mr. P.G. Desai, learned advocate for the respondent Corporation has reiterated the submissions made in the reply affidavit filed on behalf of the Corporation. He submitted that the petitioners have no legal right for claiming salary for the post of Supervisors.

5. Having heard the learned counsel for the parties, it appears to the Court that even though the record does not indicate any formal order appointing the petitioners as Supervisors, the fact remains that the petitioners were required to perform the duties of Supervisors and that they have been performing

such duties for the last at least 15 years. The petitions were filed in the year 1993. At that time the petitioners had produced identity cards and curfew pass issued by the Corporation and in those documents the petitioners were shown as Supervisors. The petitions came to be admitted in 1995/1996 and ad-interim relief of status quo has been continuing for the last 10 years which was also the case in the said matter, namely, Special Civil Application No. 8698 of 1990. This Court, therefore, finds considerable substance in the submission of Mr. Raval for the petitioners that the petitioners in these petitions also deserve to be granted the same relief which was granted by this Court in the judgement dated 16.2.2006 in Special Civil Application No. 8698 of 1990. The affidavits filed by the respondent do not dispute the factual aspect that the officers have required the petitioners to render the service as Supervisors and when this situation has been continuing for the last more than 15 years, it is reasonable to proceed on the basis that the respondent Corporation has been taking the services of the petitioners as Supervisors and continues to need their services as Supervisors. Since this situation has been continuing from the date even prior to the date of filing of these petitions in January/February, 1993, following the judgement dated 16.2.2006 in Special Civil Application No. 8698 of 1990, the respondent Corporation is required to be directed to notionally fix the petitioners' pay in the scale of Supervisors with effect from 1.1.1993

and to pay them the pay and allowances as per the said fixation hereafter i.e. with effect from 1.7.2006.

6. These petitions are accordingly allowed and the respondent Corporation is directed to fix pay of all the three petitioners notionally in the pay scale for Supervisors with effect from 1.1.1993 and to actually pay them the pay and allowances on the aforesaid basis with effect from 1.7.2006 onwards. It is clarified that the respondent Corporation is not required to pay any arrears for the period 1.1.1993 to 30.6.2006. Rule is made absolute to the aforesaid extent in all these petitions.

(M.S. SHAH, J)

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